IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 521 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SOHANLAL DALICHAND SALIA

Appearance:

Mr. K.P. Raval, APP for appellant.

MR EE SAIYED for Respondents.

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 07/12/2000

ORAL JUDGEMENT

State of Gujarat, by filing this appeal under Section 377 of the Code of Criminal Procedure, has challenged the judgment and order dated May 5, 1990, passed by the learned Metropolitan Magistrate, Court No.12, Ahmedabad,in Criminal Case No. 528 of 1988 by which order the learned Metropolitan Magistrate by accepting the plea of guilty of the respondents convicted them under Section 409, 120-B and 114 I.P.C. and sentenced them till rising of the Court and pay fine of

Rs. 2,000/=, in default S.I. for one year. The respondents were chargesheeted along with one Himatlal Keshavlal Shah for offences punishable under Section 409, 120-B and 114 of I.P.C. in the Court of Metropolitan Magistrate, Court No.12,Ahmedabad in Criminal Case No. 528 of 1988. At the time of framing of the charge, the respondents pleaded guity and the learned Magistrate imposed sentence on each of them as mentioned above. State of Gujarat has challenged the order of the learned Magistrate imposing minor punishment and has prayed to enhance the sentence. Learned advocate for the respondents has tendered the affidavit of each of the respondents inter alia stating that they were given assurance through their advocate who appeared in the trial Court that a fine will be imposed and punishment of one day will be awarded if they plead guilty. It is stated that on this assurance the respondents had pleaded guilty and they were sentenced to undergo imprisonment till rising of the Court and pay fine of Rs.2000/=.

2. The Supreme Court in Kasambhai Abdulrehmanbhai Sheikh Vs. State of Gujarat & Another - AIR 1980 S.C. 854 has ruled that where the conviction of the accused was based solely on the plea of guilty entered by him and this confession of guilt was the result of plea bargaining between the prosecution, the defence and the Magistrate, it must be considered to be unconstitutional and illegal. The Supreme Court has ruled that in such cases instead of enhancement of the sentence, the case should be remanded back to the Magistrate for trial in acccordance with law ignoring plea of guilty entered by the accused.

3. In view of the principle laid down by the Supreme Court in Kasambhai Abdulrehmanbhai's case (Supra), in my opinion, the respondents had pleaded guilty on the assurance given by the Court and the learned advocate appearing for them. This being a case of plea bargaining, instead of enhancing the sentence, I remand the case to the Court No.12, of Metropolitan Magistrate, Ahmedabad, for being tried in accordance with law ignoring the plea of guilty of the respondents. This being an old case, the learned Metropolitan Magistrate, Court No.12 is directed to dispose of the case, as expeditiously as possible. The learned counsel for the respondents has made a statement at the Bar on instructions received from the respondents, that the case against the other accused, namely, Himatlal Keshavlal Shah is pending in the same Court wherein that accused had not pleaded guilty. The learned Magistrate is, therefore, directed to try the case of that accused along

with the present respondents and dispose of the case as early as possible. With this direction, this appeal stands disposed of. Office is directed to send Record & Proceedings to the Metropolitan Magistrate, Court No.12, Ahmedabad forthwith.

rmr. =======